

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**MICHAEL DEMETRIUS AMBROSE**

**PETITIONER**

**v.**

**CIVIL ACTION NO. 1:15-cv-240-HSO-JCG**

**STATE OF MISSISSIPPI and  
LEPHER JENKINS, Warden**

**RESPONDENTS**

**ORDER ADOPTING [15] REPORT AND RECOMMENDATION,  
GRANTING [9] MOTION TO DISMISS, AND DISMISSING  
[1], [6] PETITION WITH PREJUDICE**

This matter comes before the Court on the Report and Recommendation [15] of United States Magistrate Judge John C. Gargiulo, entered in this case on April 18, 2016, and the Motion to Dismiss [9] filed by Respondents State of Mississippi and Warden Lepher Jenkins on September 29, 2015. The Magistrate Judge determined that Petitioner Michael Demetrius Ambrose's Petition [1], [6] pursuant to 28 U.S.C. § 2254 was time-barred and recommended that Respondents' Motion to Dismiss be granted and the Petition be dismissed. R. & R. [15] at 11.

The Report and Recommendation was mailed to Petitioner via certified mail, return receipt requested, and was received on April 21, 2016. Acknowledgment of Receipt [16] at 1. To date, no objection to the Report and Recommendation has been filed. After due consideration of the Report and Recommendation [15], Respondents' Motion [9], related pleadings, the record, and relevant legal authority, the Court finds that the Magistrate Judge's Report and Recommendation [15]

should be adopted, that Respondents' Motion to Dismiss [9] should be granted, and that Petitioner's Petition for Writ of Habeas Corpus [1], [6] should be dismissed with prejudice as time-barred.

## I. BACKGROUND

On August 8, 2012, Petitioner Michael Demetrius Ambrose ("Ambrose" or "Petitioner"), was found guilty of the charge of murder by a jury in the Circuit Court of Harrison County, Mississippi, Second Judicial District. Sentencing Order [9-1] at

1. On August 14, 2012, the Circuit Court sentenced Ambrose to a term of life imprisonment in the custody of the Mississippi Department of Corrections. *Id.*

Ambrose appealed his conviction, but the Mississippi Supreme Court affirmed the trial court on December 12, 2013. *Op.* [9-2] at 1-8; *see also Ambrose v. State of Miss.*, 133 So. 3d 786 (Miss. 2013). Ambrose sought, and the Mississippi Supreme Court granted, an extension of time until January 19, 2014, in which to file a motion for rehearing. *See Ambrose v. State of Miss.*, No. 2012-KA-01716-SCT, Clerk's Notice (Miss. Dec. 19, 2013).<sup>1</sup> Ambrose did not file a motion for rehearing.

On or about April 2, 2015, Ambrose filed in the Circuit Court a Motion for Post-Conviction Collateral Relief. *Mot.* [9-5] at 1-45. The Circuit Court summarily denied the Motion on April 8, 2015, for lack of jurisdiction because Ambrose had not

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<sup>1</sup> The Report and Recommendation contains a typographical error stating that Ambrose's Motion for additional time was filed, and the Mississippi Supreme Court's Order was entered, on December 19, 2014. *R. & R.* [15] at 5 n.5. The correct date is December 19, 2013. This scrivener's error has no bearing on the substance of the Report and Recommendation and does not alter the result in this case.

applied to the Mississippi Supreme Court for permission to proceed in the trial court as required by Mississippi Code § 99-39-27. Order [9-6] at 1.

On or about April 29, 2015, Ambrose filed in the Supreme Court of Mississippi an Application for Leave to Proceed in the Trial Court [9-3]. On July 1, 2015, the Mississippi Supreme Court denied Petitioner's Motion because "the issues raised by Petitioner lack[ed] sufficient merit to warrant an evidentiary hearing." Order [9-4] at 1.

On July 13, 2015, Ambrose signed an Application for Leave to Proceed in the Trial Court [1] which was docketed in this Court on July 23, 2015, as a Petition for Writ of Habeas Corpus. Petition [1] at 1-7. On August 21, 2015, the Magistrate Judge entered an Order [5] directing Ambrose to file an amended petition in the form and manner prescribed by the Rules Governing Section 2254 Proceedings for the United States District Courts. Ambrose signed the Petition for Writ of Habeas Corpus [6] on September 1, 2015.

On September 29, 2015, Respondents filed a Motion to Dismiss [9] pursuant to 28 U.S.C. § 2244(d), arguing that the Petition should be dismissed with prejudice pursuant to the one-year statute of limitations provision of 28 U.S.C. § 2244(d)(1). The Magistrate Judge agreed that Ambrose's Petition was time-barred and recommended that the Motion to Dismiss be granted and that Ambrose's Petition be dismissed. R. & R. [15] at 11. Ambrose has not filed any objection to the Report and Recommendation, and the time for doing so has passed. *See* L.U. Civ. R. 72(a)(3).

## II. DISCUSSION

Where no party has objected to a magistrate judge's report and recommendation, the Court need not conduct a de novo review of it. 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made."). In such cases, the Court applies the "clearly erroneous, abuse of discretion and contrary to law" standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted the required review, the Court concludes that the Magistrate Judge's findings are not clearly erroneous, nor are they an abuse of discretion or contrary to law. Ambrose's Petition is time-barred according to 28 U.S.C. § 2244(d)(1), and dismissal with prejudice is warranted.

## III. CONCLUSION

For the foregoing reasons, the Court will adopt the Magistrate Judge's Report and Recommendation [15] as the opinion of this Court, grant Respondents' Motion to Dismiss [9], and dismiss Ambrose's Petition [1], [6] with prejudice.

**IT IS, THEREFORE, ORDERED AND ADJUDGED** that, the Report and Recommendation [15] of United States Magistrate Judge John C. Gargiulo, entered in this case on April 18, 2016, is **ADOPTED** in its entirety as the finding of this Court.

**IT IS, FURTHER, ORDERED AND ADJUDGED** that, the Motion to Dismiss [9] filed by Respondents State of Mississippi and Warden Lephew Jenkins

on September 29, 2015, is **GRANTED**.

**IT IS, FURTHER, ORDERED AND ADJUDGED** that, Petitioner Michael Demetrius Ambrose's Petition [1], [6] pursuant to 28 U.S.C. § 2254 is **DISMISSED WITH PREJUDICE**.

**SO ORDERED AND ADJUDGED**, this the 17<sup>th</sup> day of May, 2016.

*s/ Halil Suleyman Ozerden*

HALIL SULEYMAN OZERDEN  
UNITED STATES DISTRICT JUDGE